



**Directline Assurance Company Limited & 4 others v Inspector General of Police & 3 others; Kiarie & 14 others (Intended Accused) (Criminal Revision 47 of 2024) [2025] KEHC 18757 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18757 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION 47 OF 2024  
DR KAVEDZA, J  
DECEMBER 18, 2025**

**BETWEEN**

**DIRECTLINE ASSUARANCE COMPANY LIMITED ..... 1<sup>ST</sup> APPLICANT  
ROYAL MEDIA SERVICES LIMITED ..... 2<sup>ND</sup> APPLICANT  
ROYAL CREDIT LIMITED ..... 3<sup>RD</sup> APPLICANT  
SAMUEL KAMAU MACHARIA ..... 4<sup>TH</sup> APPLICANT  
PURITY GATHONI MACHARIA ..... 5<sup>TH</sup> APPLICANT**

**AND**

**INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT  
DIRECTOR OF CRIMINAL INVESITGATIONS ..... 2<sup>ND</sup> RESPONDENT  
DIRECTOR OF PUBLIC PROSECUTIONS ..... 3<sup>RD</sup> RESPONDENT  
HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**JANICE TERESA WANJIKU KIARIE ..... INTENDED ACCUSED  
VICTOR BLASCO WIJENJE ..... INTENDED ACCUSED  
JANUS LIMITED ..... INTENDED ACCUSED  
HARBOR CAPITAL LIMITED ..... INTENDED ACCUSED  
KEVIN MCCOURT ..... INTENDED ACCUSED  
SURE INVEST LIMITED ..... INTENDED ACCUSED  
JAMES GACOKA ..... INTENDED ACCUSED**



**TRIAD NETWORK LIMITED ..... INTENDED ACCUSED**  
**GORDON RADIER WERE ..... INTENDED ACCUSED**  
**AKM INVESTMENT LIMITED ..... INTENDED ACCUSED**  
**SKENNY INVESTMENT PTY LIMITED ..... INTENDED ACCUSED**  
**JOHN MAONGA ..... INTENDED ACCUSED**  
**ENID MURIUKI ..... INTENDED ACCUSED**  
**WINNIE JUMBA ..... INTENDED ACCUSED**  
**PHILIP ALIKER ..... INTENDED ACCUSED**

## **RULING**

1. This ruling arises from an application for revision brought under section 362 of the Criminal Procedure Code (Cap 75, Laws of Kenya), read together with Articles 165(6) and (7) of *the Constitution* of Kenya, 2010. The application seeks the intervention of this Court in respect of orders made by the Chief Magistrate's Court in Miscellaneous Criminal Application No. E2754 of 2021, *Directline Assurance Company Limited & Others v Hillary Mutyambai & 14 Others*.
2. The genesis of the dispute lies in an ex parte application filed on or about 20<sup>th</sup> August 2021 by the 2<sup>nd</sup> to 5<sup>th</sup> Applicants before the Chief Magistrate's Court, seeking leave to institute a private prosecution under section 88 of the Criminal Procedure Code against several Intended Accused Persons. The allegations concerned purported economic crimes arising from the management and affairs of the 1st Applicant company.
3. Upon learning of the proceedings, the Intended Accused Persons applied to be joined and to participate in the proceedings at the leave stage. After hearing the parties, the learned trial magistrate, Honourable Z. Abdul, delivered a ruling on 28<sup>th</sup> February 2022 allowing the Intended Accused to participate in the hearing of the application for leave.
4. Aggrieved by that decision and subsequent procedural directions, the Applicants filed the present Originating Notice of Motion dated 30<sup>th</sup> June 2022. The application is supported by affidavits sworn by the 4<sup>th</sup> Applicant on 30<sup>th</sup> June 2022 and 5<sup>th</sup> September 2022. The principal prayers sought are for declaration that the ruling of 28<sup>th</sup> February 2022 contravened Articles 48 and 50 of *the Constitution*; revision and setting aside of the impugned ruling and directions; stay of proceedings before the Chief Magistrate's Court; and an order that the matter be heard before a magistrate other than Honourable Z. Abdul.
5. The application is strenuously opposed. Grounds of opposition were filed by the 1st, 2nd and 4th Respondents dated 26<sup>th</sup> July 2022. The 5th to 9th and 12th to 14th Intended Accused filed grounds of objection dated 3<sup>rd</sup> August 2022 and a replying affidavit sworn on 8<sup>th</sup> August 2022 by the 5th Intended Accused. Further and extensive opposition is mounted by the 10th Intended Accused, AKM Investments Limited, through a replying affidavit sworn on 3<sup>rd</sup> April 2025 by its director.
6. Additional objections were raised, including the alleged lack of locus standi of the 4th Applicant on account of being an undischarged bankrupt, the alleged defect in form and substance of the revision application, and the contention that the 1st Applicant company itself disowns both the private prosecution and the present revision for want of proper authority.



7. From the pleadings, affidavits, and submissions, a single overarching issue arises for determination:
  - i. Whether the trial magistrate erred in law, acted illegally or with material irregularity, or improperly exercised judicial discretion by permitting the Intended Accused Persons to participate at the leave stage of the application for private prosecution.
8. The revisional jurisdiction of the High Court is circumscribed. Section 362 of the Criminal Procedure Code provides:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
9. This jurisdiction is supervisory, not appellate. It is reinforced by Articles 165(6) and (7) of *the Constitution*. The settled position is that revision will only lie where there is a manifest illegality, an incorrectness apparent on the face of the record, a material irregularity occasioning injustice, or an improper exercise of discretion amounting to a miscarriage of justice.
10. In *Joseph Nduvi Mbuvi v Republic* [2019] eKLR, Odunga J cautioned against undue interference with interlocutory decisions of trial courts and stated:

“From the foregoing it is clear that the High Court cannot exercise revisionary jurisdiction in an order of acquittal. It may however exercise the said jurisdiction in case of a conviction or in any other order.
11. It is, however my view that the jurisdiction should not be invoked so as to micro-manage the Lower Courts in the conduct and management of their proceedings for the simple reason that if every ruling of the Lower Court and that goes against a party were to be subjected to the revisionary jurisdiction of the Court, floodgates would be opened and the Court would be inundated with such applications thus making it practically impossible for the Lower Courts to proceed with any case to its logical conclusion.
12. Similarly, in *Bryan Yongo v Republic*, Criminal Revision No. 147 of 2007, Ojwang J (as he then was) emphasised the importance of continuity of trial proceedings and held:

“Continuity of the trial process may not be unnecessarily interrupted by applications to the High Court alleging defective procedure, in respect to directions which will, in any event, culminate in the merits of the judgment itself.”
13. These authorities underscore the restraint with which this Court must approach applications for revision, particularly where the impugned decision concerns case management or procedural discretion.
14. The law on the nature and limits of judicial discretion is well settled and of long standing. In *Osborn v Bank of the United States*, 22 U.S. (9 Wheat.) 738, 866 (1824), Chief Justice John Marshall stated, in oft-cited and enduring terms:

“Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge, always for



the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law.”

15. The Supreme Court of India echoed this classical understanding in *K. Prakash v B.R. Sampath Kumar*, Civil Appeal No. 9047 of 2014, citing *Rookey’s Case* (1598) 77 ER 209, and held:

“Discretion is a science, not to act arbitrarily according to men’s will and private affection... it is to be governed by rules of law and equity... in no case does it contradict or overturn the grounds or principles thereof.”

16. In the Kenyan context, the circumstances under which an appellate or supervisory court may interfere with discretionary orders were authoritatively set out in *Mbogo & Another v Shah* [1968] EA 93, where Sir Charles Newbold P held, at page 96:

“A court of appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been misjustice.”

17. These principles bind this Court. The question, therefore, is not whether this Court would have exercised discretion differently, but whether the discretion exercised by the trial magistrate was unlawful, improper, or irrational.
18. Section 88 of the Criminal Procedure Code vests discretion in the magistrate to permit a private person to conduct a prosecution. Applications for leave are ordinarily brought ex parte. However, the statute does not prohibit the court from hearing other parties where the interests of justice so demand.
19. Private prosecutions sit at the intersection of individual access to justice and the public interest in preventing misuse of the criminal process. They are a necessary safeguard where state agencies fail to act, but they are equally susceptible to abuse, particularly where criminal proceedings are deployed to advance civil or commercial disputes.
20. It is for this reason that courts have consistently emphasised the need for caution, scrutiny, and fairness at the leave stage. Where credible material is placed before the court suggesting lack of authority, ulterior motive, or abuse of process, it is not only permissible but prudent for the court to hear the intended accused on those threshold issues.
21. In the present case, the learned magistrate was confronted with allegations that the private prosecution was instituted without corporate authority, in the context of an entrenched shareholder dispute, and alongside multiple parallel proceedings. These were not fanciful assertions. They were supported by affidavits, documentary evidence, and an arbitral award.
22. In those circumstances, to shut out the Intended Accused at the leave stage would have risked granting leave on a partial and potentially distorted factual record. The magistrate’s decision to allow participation was thus anchored in fairness, transparency, and the need to protect the integrity of the criminal justice process.
23. The Applicants allege that permitting the Intended Accused to participate violated their rights to access to justice and fair hearing under Articles 48 and 50 of *the Constitution*.



24. This argument is misconceived. Article 50 guarantees a fair hearing to all parties. It does not entitle one party to an uncontested process where the rights, liberty, and reputation of others are at stake. Fairness is not a one-way street.
25. Participation by the Intended Accused at the leave stage does not deny the Applicants a hearing. It subjects their application to scrutiny. That scrutiny enhances, rather than undermines, the legitimacy of any decision ultimately made.
26. As the Supreme Court stated in *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others* [2013] eKLR:

“Adherence to precedent should be the rule and not the exception. The labour of judges would be increased almost to breaking point if every past decision could be reopened in every case, and one could not lay one’s own course of bricks on the secure foundation of the courses laid by others who had gone before him.”
27. The trial magistrate’s approach is consistent with precedent and constitutional values.
28. The prayer that the matter be transferred to another magistrate is premised on non consideration of their submissions and material placed before the court. However, no factual basis has been laid to support such an allegation.
29. It is trite law that adverse rulings, without more, do not amount to bias. The test is whether a fair-minded and informed observer would apprehend a real possibility of bias. Nothing on record meets that standard.
30. Having carefully examined the record of the lower court, the affidavits and submissions on record, and the applicable law, this Court is satisfied that:
  - i. The trial magistrate acted within jurisdiction under section 88 of the Criminal Procedure Code.
  - ii. The discretion to allow participation of the Intended Accused at the leave stage was exercised judiciously, lawfully, and for sound reasons.
  - iii. No illegality, material irregularity, incorrectness, or impropriety has been demonstrated.
  - iv. No prejudice has been occasioned to the Applicants.
  - v. The threshold for the exercise of this Court’s revisionary jurisdiction has not been met.
31. In the premises, it is my finding that the application for revision of the ruling delivered on 28<sup>th</sup> February 2022 is found to be lacking in merit and is dismissed in its entirety with costs awarded against the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicants.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 18<sup>TH</sup> DAY OF DECEMBER 2025**

**D. KAVEDZA**

**JUDGE**

